

MCC Counter-Trafficking in Persons Policy

10/18/21 12:00 am



Table of Contents

Purpose	3
Scope	3
Authorities	3
Federal Government Regulations and Acts	3
Related MCC Policies and Procedures	3
Partner Country Commitments	3
Definitions	3
Relevant Institutional Commitments	5
Counter-Trafficking in Persons (C-TIP) Requirements	6
MCC Country Eligibility and Selection	6
Program Development Phase	6
Program Implementation Phase	7
Program Closure	11
Administration of this Policy	12
Endnotes	13

1. Purpose

This policy provides an analytical framework to ensure that MCC assistance complies with the Victims of Trafficking and Violence Protection Act of 2000, as amended (TVPA). TVPA provides tools to combat trafficking in persons (TIP) both worldwide and domestically. MCC maintains a zero-tolerance policy against TIP which also applies to MCC partner countries, the accountable entities designated by MCC partner countries to manage program implementation (referred to in this policy as an “Accountable Entity”), and all MCC and Accountable Entity employees, consultants, contractors, subcontractors, or other agents. MCC country teams will apply this policy to ensure risks associated with TIP are minimized throughout the lifecycle of MCC-funded programs.

2. Scope

This policy applies to all MCC-provided assistance under Sections 605, 609(g), and 616 of the Millennium Challenge Act, as amended (the “Act”).

3. Authorities

3.1. Federal Government Regulations and Acts

- a. Section 605(e)(3) of the Act
- b. Victims of Trafficking and Violence Protection Act of 2000, as amended ¹
- c. Executive Order 13627 on “Strengthening Protections Against TIP in Federal Contracts”

3.2. Related MCC Policies and Procedures

- a. MCC Gender Policy
- b. MCC Environmental Guidelines
- c. MCC Program Procurement Guidelines
- d. MCC Suspension and Termination Policy
- e. MCC Cost Principles for Accountable Entity Operations Policy

3.3. Partner Country Commitments

MCC recognizes partner countries’ anti-TIP commitments, including their TIP-related laws and programs and their ratification of different international agreements, such as the Palermo Protocol.

4. Definitions

MCC uses the TIP ² definition from the TVPA:

Severe forms of trafficking in persons:

- A. Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- B. The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”

Additional supporting terms from the U.S. Department of State Office to Monitor and Combat Trafficking in Persons, include:

Bonded Labor or Debt Bondage:

The status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Child Sex Trafficking:

Any child (under the age of 18) who has been recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized, or solicited to engage in a commercial sex act is a victim of human trafficking regardless of whether or not force, fraud, or coercion is used. The use of children in the commercial sex trade is prohibited both under U.S. law and by legislation in most countries around the world.

Domestic Servitude:

A form of forced labor in which the trafficker requires a victim to perform work in a private residence. Domestic workplaces are often informal, connected to off duty living quarters, and not shared with other workers. Such an environment is conducive to exploitation because authorities cannot inspect private homes as easily as formal workplaces. The use of informal, or even verbal, employment contracts compounds vulnerability. Foreign domestic workers are particularly vulnerable to abuse due to factors such as language and cultural barriers and lack of community ties.

Forced Child Labor:

Although children may legally engage in certain forms of work, forms of slavery or slave-like practices – including the sale of children for exploitation, forced or compulsory child labor, and debt bondage and serfdom of children – continue to exist, despite legal prohibitions and widespread condemnation.

*Forced Labor*³:

Means knowingly providing or obtaining the labor or services of a person

1. By threats of serious harm to, or physical restraint against, that person or another person;
2. By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
3. By means of the abuse or threatened abuse of law or the legal process.

Sex Trafficking:

When a person is required to engage in a commercial sex act as the result of force, threats of force, fraud, coercion or any combination of such means, that person is a victim of human trafficking. This is true even if the victim previously consented to engage in commercial sex.

5. Relevant Institutional Commitments

In 2012, MCC formally adopted the International Finance Corporation's (IFC) Performance Standards (PS) on Environmental and Social Sustainability⁴ as part of the MCC Environmental Guidelines. IFC PS -2 incorporates the United Nations (UN) Guiding Principles on Business and Human Rights and other International Labour Organisation (ILO) Conventions and recognizes that "the pursuit of economic growth through employment creation and income generation should be accompanied by protection of the fundamental rights of workers." There are substantial synergies between IFC PS 2 and the scope of this policy, especially in terms of labor exploitation. The objectives of PS -2 include:

- Promotion of compliance with national employment and labor laws;
- Protection of workers, including vulnerable categories of workers such as children, migrant workers, workers engaged by third parties, and workers in the client's supply chain; and
- Avoidance of the use of forced labor.

Other components of the IFC Performance Standards that are relevant to MCC's approach to TIP include IFC PS 1: Assessment and Management of Environmental and Social Risks and Impacts, IFC PS 4: Community Health, Safety and Security, and IFC PS 5: Land Acquisition and Involuntary Resettlement. When host country laws and regulations differ from the levels and measures presented in the MCC Environmental Guidelines, projects are expected to achieve whichever levels and measures are more stringent.

MCC's Gender Policy is also relevant to MCC's approach to countering trafficking in persons. It requires that activities funded by MCC specifically address social and gender inequalities, both to ensure opportunities for the participation and benefit of women and vulnerable groups and to avoid causing negative social and gender impacts. While trafficking impacts men, women, boys, and girls, women and children are particularly vulnerable. Each MCC compact program, and most threshold programs, require the development and implementation of a social and gender integration plan (SGIP), which provides a

roadmap for social inclusion and gender integration throughout the lifecycle of the program. The SGIP also identifies and seeks to address the social and gender risks associated with MCC-funded programs including, but not limited to, risks associated with TIP for sex and labor, gender-based violence, and sexual exploitation and harassment.

6. Counter-Trafficking in Persons (C-TIP) Requirements

6.1. MCC Country Eligibility and Selection

MCC incorporates trafficking in persons issues in its country selection process through multiple avenues. First, trafficking issues are covered by the Rule of Law and Civil Liberties indicators on the MCC scorecard⁵. Both indicators consider trafficking in persons as one of their factors and are part of the criteria used by MCC's Board of Directors to determine which countries to select as eligible for MCC assistance. Additionally, a country's classification on the U.S. Department of State Trafficking in Persons Report can affect a country's status as an MCC "candidate country." The report classifies countries into one of four tiers, as mandated by the TVPA (Tier 1 being the best, followed by Tier 2, Tier 2 Watch List, and Tier 3). The tier placement is updated annually by the State Department and reflects the extent to which a government is making efforts to meet the TVPA's minimum standards for the elimination of human trafficking. Any country that is ranked on Tier 3 of the TIP Report and that has not received a waiver of the sanctions associated with being on Tier 3, cannot be an MCC "candidate country" for that fiscal year. In considering eligibility for countries on the Tier 2 Watch List, MCC's Board of Directors reviews supplemental information on the countries' TIP rankings and TIP-related practices, such as changes to regulations, enforcement and monitoring requirements, and provisions made to protect survivors of trafficking.

6.2. Program Development Phase

TIP risk assessments will be conducted at two different phases: 1) in the early stages of program development as an initial, country-wide assessment; and 2) during the project development phase, as a project-specific assessment. The project-specific assessment will be followed by a risk categorization.

6.2.1. Initial TIP Assessment

MCC conducts initial TIP risk assessments⁶ at the country level during the early phase of program development, to gain a better understanding of the country context and to inform future program resource needs. Initial TIP risk assessments will be informed by the U.S. Department of State Trafficking in Persons Report, as well as additional information collected as part of MCC's due diligence.

Prior to signing a compact or threshold program grant agreement, the MCC country team will conduct and document the initial TIP risk assessment, as well as the team's proposed strategy, budget, and procurement requirements for mitigating identified risks and further assessing project-specific risks. It will also document a description of governmental and nongovernmental anti-trafficking related service

providers and identifying potential institutions with which MCC or the Accountable Entity might collaborate throughout program implementation. The purpose of this analysis is to identify appropriate partners to conduct project-specific TIP risk assessments, provide TIP prevention and awareness training, monitor compliance with the TIP risk management plans, respond to grievances, and provide emergency services to survivors. If project-specific TIP risks have been identified prior to signing the compact or threshold program grant agreement, the country team should document such risks along with proposed mitigation measures or plans for developing project-specific TIP risk management plans.

Compact or threshold program budgets should include program funding for detailed development and implementation of project-specific TIP risk mitigation measures, either within the budget for the relevant project(s) or elsewhere in the program implementation budget. Further details for conducting this initial TIP risk assessment can be found in *MCC's Guidance for Implementation of the C-TIP Policy*.

6.2.2. Project Risk Assessment

Project-specific ⁷ TIP risk assessments should start during program development and may, in some circumstances, extend into the implementation phase. The Environmental and Social Impact Assessments (ESIAs) are typically the main tool that MCC uses to conduct project-specific TIP risk assessments. In addition to the ESIA, MCC and the relevant Accountable Entity may conduct an independent study 1) if the TIP risk for a project is particularly high, 2) if the ESIA is unlikely to produce a high-quality TIP risk assessment, or 3) if there are other barriers to the completion of a TIP risk assessment as part of ESIA process.

Each project-specific TIP risk assessment must identify TIP risks related to project implementation, operation, and maintenance, and, using this information, MCC must categorize each project as presenting a “high” or “low” TIP risk. Criteria for project-specific risk categorization can be found in *MCC's Guidance for Implementation of the C-TIP Policy*. GSI conducts the project-specific TIP risk categorization in consultation with ESP, with GSI having the ultimate responsibility for determining the project-level risk. Once project-level TIP risk assessment and categorization are completed, the Accountable Entity must document the project-specific TIP risk categorization in both the SGIP and the Environmental and Social Management Plan (ESMP). The SGIP and/or ESMP must also include a survivor-centered response protocol, outlining resources and processes to support TIP survivors, should an incident occur.

6.3. Program Implementation Phase

MCC, partner countries, Accountable Entities, and all employees, contractors, consultants, sub-contractors, grantees, and sub-grantees of MCC and Accountable Entities have responsibilities under the “MCC Counter-TIP Minimum Compliance Requirements,” (section 6.3.1). The MCC Counter-TIP Minimum Compliance Requirements apply to all MCC-funded projects, regardless of whether they are categorized as high or low risk for TIP.

If a project is categorized as posing a high risk for TIP, the Accountable Entity must develop and

implement a project-specific TIP risk management plan, in addition to applying the Counter-TIP Minimum Compliance Requirements. MCC must review and approve each TIP risk management plan prior to its implementation. The relevant consultants and contractors are responsible for implementation of the TIP risk management plan(s), unless otherwise specified by the corresponding TIP risk management plan. Detailed guidance on TIP risk management plans can be found in *MCC's Guidance for Implementation of the C-TIP Policy*.

If a project or activity is modified during program implementation, MCC and the Accountable Entity must assess such modification in terms of TIP risks and must update the project-specific TIP risk assessment accordingly. Should the TIP risk categorization require revision, the Accountable Entity must prepare and submit to MCC for approval a memo describing the analysis and rationale for either upgrading or downgrading the TIP risk ratings. If the risk has changed from insignificant to significant, the Accountable Entity must develop a TIP risk management plan.

MCC and partner countries must monitor programs to verify compliance with the MCC Counter-TIP Minimum Compliance Requirements and TIP risk management plans, when applicable. Unless otherwise agreed with the MCC Resident Country Director, GSI will lead MCC's oversight for monitoring prevention efforts related to sex trafficking and ESP will lead the oversight for monitoring prevention efforts related to forced labor.

MCC will provide support and oversight to Accountable Entities in ensuring that all employees, contractors, consultants, and grantees of the Accountable Entity adhere to the C-TIP Policy and that TIP-related reports are developed and followed to MCC's satisfaction. In addition to oversight missions, MCC may opt to carry out independent audits of compliance with these requirements and plans.

6.3.1. Counter-Trafficking in Persons Minimum Compliance Requirements

MCC's Counter-TIP Minimum Compliance Requirements (referred to in this document as the "Requirements") apply to all MCC-funded projects, regardless of the TIP risk categorization for the country or the relevant project. MCC and MCC Partner Countries are responsible for monitoring MCC-funded programs to verify compliance with the C-TIP Policy and the Minimum Compliance Requirements. Roles and responsibilities for C-TIP oversight shall be determined prior to program signing and based on the Accountable Entity's proposed staffing arrangement.

Prohibition

The Accountable Entity designated by an MCC partner country to manage program implementation and its employees, contractors⁸, consultants⁹, grantees¹⁰, and other agents are prohibited from engaging in any form of TIP during, as applicable, their tenure as an Accountable Entity employee or their period of performance of any contract or grant funded, related to the compact or threshold programs. Statements in this document referring to contractors, consultants, and grantees also apply to sub-contractors, sub-consultants, and sub-grantees. All such persons, entities, and the employees of such entities must comply with applicable prohibitions described in U.S. laws and executive orders regarding TIP.

Accountable Entity Responsibilities

At a minimum, Accountable Entities are responsible for the following ¹¹ :

1. **Zero tolerance policy.** Zero tolerance policy requires that every TIP allegation will be assessed and that every TIP incident will be addressed through remedies defined by the C-TIP Policy (section 7).
2. **Project assessment and planning.** Ensuring that key social risk assessment and management documents, including ESIA's and ESMPs, include assessment of project-specific TIP risks, mitigation measures, and monitoring plans.
3. **Establishing an anonymous reporting mechanism** for suspected instances of TIP (via email, text message, instant messaging application, voice mail, or other means), ensure it is made widely available across project stakeholders, including members of the public and those working on MCC-funded projects (contractors, sub-contractors, day laborers), and track reporting accordingly.
4. **Project Oversight and Management.** As TIP risks are identified and mitigation measures proposed, ensure that TIP oversight responsibilities are assigned to appropriate Accountable Entity staff and specified in key contracts, including Works Contracts and Consultant Services.
5. **Procurement.** Ensuring that potential contract bidders and grant applicants are explicitly alerted to the TIP Requirements at four points in the procurement process:
 - a. Requiring each bidder to certify in the "Letter of Bid" (for construction procurements) or "Technical Proposal Submission Form" (for consulting procurements) or Request for Applications (for grant agreement) that (1) the bidder or the grant applicant is not engaged in, facilitating, or allowing any of the prohibited activities described in the C-TIP Policy and will not engage in, facilitate, or allow any such prohibited activities for the duration of the contract; (2) **the bidder or the grant applicant** provides assurance that the prohibited activities described in the C-TIP Policy will not be tolerated on the part of its employees, or any subcontractor or supplier, or their respective employees; and (3) **the bidder or the grant applicant** acknowledges that engaging in such activities is cause for suspension or termination of employment or of the contract or grant.
 - b. Including clear language referring to the Requirements and related project-specific TIP risk mitigation in appropriate solicitation package documents, such as technical specifications and terms of reference;
 - c. Explicitly referencing the C-TIP Policy and the Requirements during pre-bid meetings and responding to any questions posed; and
 - d. Discussing the Requirements during negotiations with the selected winner of a contract or grant and verifying the adequacy of the contractor or grantee's C-TIP orientation plan for workers and TIP response plan, as described below.
6. **Project implementation.** Taking specific measures to monitor and ensure compliance of consultants, contractors, and grantees with the Requirements throughout project implementation, including, but not limited to, reviewing project reports, conducting site visits, and verifying that the supervising engineer and/or other designated management or supervisory entity is carrying out oversight responsibilities as specified in the terms of contract.
7. **TIP response and remedy.** Ensuring that TIP reports are appropriately addressed by:
 - a. Notifying MCC within 24 hours of becoming aware that an alleged TIP incident has occurred, (taking into consideration confidentiality of personal identifiable information and whistleblower protection);
 - b. Using a survivor-centered approach to manage any incidents; and
 - c. Applying appropriate remedies. Once a TIP incident has been confirmed and depending on the severity of each case and the prevailing language of the applicable agreement(s), the

Accountable Entity will apply remedies, which could include any, all, or any combination of the following:

- a. removing the involved Accountable Entity employee, consultant, contractor, grantee, or other agent including employees or affiliates from the contract or the grant;
- b. requiring the termination of a subcontract, sub-award, or sub-grant;
- c. suspending contract or grant payments until the breach is remedied to the satisfaction of MCC;
- d. denying incentive payment, consistent with the incentive plan set out in the contract, if any, for the performance period in which the Accountable Entity determined non-compliance;
- e. pursuing sanctions, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract or grant;
- f. terminating the contract or grant for default or cause in accordance with the termination clause of the contract or grant; and
- g. directing the contractor or grantee to provide reasonable financial support or restitution to the survivor(s) of any such incident, in each case in accordance with the contractor or grantee's applicable TIP response plan or TIP risk management plan, and/or based on a final judicial or administrative determination issued pursuant to applicable law or the findings of an investigation conducted (directly or through a third party) by the Accountable Entity.

Works Consultant Responsibilities

The Accountable Entity's supervisory engineer and/or other consultants will ensure their employees, subcontractors, subconsultants or and agents are aware of and adhere to this policy. The Accountable Entity's supervisory engineer and/or other consultants will monitor and report on C-TIP compliance related to works contracts, including while conducting site visits and by reviewing contractor reports and other documentation. These responsibilities will be included in the Terms of References/Description of Services, as specified in *MCC's Guidance for Implementation of the C-TIP Policy*.

Non-Works Consultant Responsibilities

Non-works consultants are responsible for ensuring that their employees and agents, including sub-contractors, are aware of and adhere to the C-TIP Policy and the Requirements. The Accountable Entity will monitor and reports on consultants' C-TIP compliance using means such as periodic reports, other relevant documentation, as well as interviews with project participants.

Grantee Responsibilities

Grantees are responsible for ensuring that their employees and subgrantees, are aware of and adhere to the C-TIP Policy and the Requirements. The Accountable Entity will monitor and report on grantees' C-TIP compliance using means such as review of reports and documentation, as well as interviews with project participants.

Works Contractor Responsibilities

At a minimum, works contractors are responsible for the following:

1. **As part of a bid or proposal**, in the Letter of Bid, (1) verifying they are not engaged in, facilitating, or allowing any of the prohibited activities described in the C-TIP Policy and will not engage in, facilitate, or allow any such prohibited activities for the duration of the contract; (2) providing assurance that the prohibited activities described in the C-TIP Policy will not be tolerated on the part of its employees¹² or any subcontractor or supplier or their respective employees; and (3) acknowledging that engaging in such activities is cause for suspension or termination of employment or of the contract.
2. **Prior to initiation of works**, providing the following to the Accountable Entity:
 - a. Procedures for notifying workers of the C-TIP Policy and orienting employees with respect to the definition of trafficking in persons and C-TIP obligations of the relevant contract;
 - b. A TIP monitoring, reporting, and response plan that defines responsible individuals and a process for (1) monitoring implementation of the Requirements, (2) engaging with any person reporting a potential project-related TIP incident and ensuring whistleblower protections to such a person, and (3) engaging with a potential survivor(s) of project-related TIP.
3. **During implementation**:
 - a. Providing written notification to the contractor's workers and to the subcontractors of C-TIP Policy and of the actions that will be taken against employees and subcontractors for violations of the C-TIP Policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment;
 - b. Orienting contractors' workers with respect to both the MCC definition of trafficking in persons and any country-specific legal definition of trafficking in persons, to examples of what might constitute trafficking in persons, and to the C-TIP obligations of the relevant contract with the Accountable Entity;
 - c. Providing information and means to those working on MCC-funded projects (contractors, sub-contractors, day laborers, etc.) so that they can report suspected instances of TIP to their employer, to the MCA's anonymous reporting mechanism, to the corresponding Accountable Entity, and, where applicable, to an independent/third party mechanism; and
 - d. Recording and reporting on its C-TIP compliance efforts, including notification of workers of the C-TIP Policy and worker orientation.
4. **TIP Response**:
 - a. Notifying the Accountable Entity:
 - a. within 24 hours of any information it receives from any source (including law enforcement) that alleges its employee(s), subcontractor, or the employee(s) of a subcontractor, has engaged in conduct that violates the C-TIP Policy; and
 - b. any actions taken against any personnel, subcontractor, subcontractor, or the employee of a subcontractor, pursuant to the Requirements.
 - b. Take appropriate action, up to and including termination, against personnel or subcontractors that violate the prohibitions set out in the MCC Counter-Trafficking in Persons Policy.

6.4. Program Closure

At least six months prior to the compact or threshold program end date, MCC will undertake a thorough review of the program to-date, as well as any related TIP grievances. In some countries, activities related

to an MCC compact or threshold program continue beyond the formal end date of the MCC program. In these cases, the partner country government, in consultation with MCC, must develop a plan prior to program closure demonstrating that the government will dedicate continued attention and commitment to TIP prevention and the implementation of grievance redress mechanisms on any projects or activities with high TIP risks. MCC expects the partner country to continue to deal with any cases that arose during the compact term and for which the final resolutions were not brought to closure. MCC will identify any outstanding actions and corresponding budgets that require the partner country's commitment and will document these actions in the form of implementation letters.

7. Administration of this Policy

This policy is effective as of the date approved and supersedes any prior MCC policy on this subject. Until such time as the *MCC's Guidance for Implementation of the C-TIP Policy* is in effect, MCC staff will draw on guidance contained in the prior version of this policy solely with respect to the framework and procedures for implementing the C-TIP requirements hereof, and solely to the extent that they align with this policy. In such circumstances, in the event of any conflict between this policy and the prior version, this policy prevails.

Endnotes

1. The TVPA has been reauthorized and amended by the TVPA Reauthorization Act of 2003, TVPA Reauthorization Act of 2005, the William Wilberforce TVPA Reauthorization Act of 2008, and the TVPA Reauthorization Act of 2017, among others.
2. “Trafficking in persons,” “human trafficking,” and “modern slavery” are umbrella terms – often used interchangeably – to refer to a crime whereby traffickers exploit and profit at the expense of adults or children by compelling them to perform labor or engage in commercial sex. A person does not need to be physically transported from one location to another in order for the crime to fall within these definitions.
3. Similarly, the IFC Performance Standards define Forced Labor as: any work or service not voluntarily performed that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor, or similar labor-contracting arrangements. In this Policy, the term labor trafficking is used interchangeably with forced labor.
4. “IFC Performance Standards on Environmental and Social Sustainability,” International Finance Corporation,
https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards
5. This policy is not intended to provide guidance on the process used to evaluate or respond to TIP as a country eligibility issue. Should a partner country’s policy performance on TIP, or any other policy issue included in MCC’s selection criteria, become a significant concern, MCC would rely on its Suspension and Termination Policy to guide MCC’s response to the issue.
6. This requirement applies to partner countries selected for compact or threshold programs in December 2020 or after.
7. Hereinafter, ‘project-specific’ is understood to also include activity-specific risk assessment, as relevant.
8. Defined as the entity(ies) or person(s), which is responsible for providing the Works to the Employer under the Contract (as defined in the MCC Standard Bidding Document – Procurement of Large Works with Pre Qualification)
9. Defined as any legal entity that may provide or provides the Services to the MCA Entity under the Contract. (as defined in the MCC Standard Bidding Document – Procurement of Consulting Services)
10. Defined as a transfer of MCC assistance in cash or in kind made for a specific purpose by an MCA Entity under any form of Grant Agreement (as defined in the MCC Program Grant Guidelines)
11. Further details on partner countries’ responsibilities are described in MCC’s Guidance for Implementation of the C-TIP Policy.
12. Applies to an employee of a bidder, supplier, contractor, subcontractor, consultant, or sub-consultant directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.